



South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

MEMORANDUM

TO: All Magistrates and Municipal Judges

FROM: Robert L. McCurdy

RE: Relief of Surety on Bond

DATE: March 9, 2005

Section 38-53-50 provides a procedure for a surety to be relieved of its obligation on a bond and have the defendant recommitted. Attached is form SCCA/625, Motion to Be Relieved On Bond, which we recommend be distributed to and used by sureties in your county or municipality for this purpose.

Section 38-53-50 provides that, upon a showing by affidavit that a term or condition of the bond has been violated by the defendant, or such a violation is imminent, the surety may place the defendant in the appropriate detention facility until the matter is settled by the court with jurisdiction over the case. The surety's affidavit, along with a copy of a completed SCCA/625, must be filed with the detention facility and serves as an order of commitment. The surety must then immediately file with the court with jurisdiction over the case the original motion and affidavit to be relieved on the bond. The surety must serve a copy of the affidavit and motion on the defendant and/or attorney, the detention facility, and the solicitor's office or arresting officer. An affidavit of service indicating compliance with the notice requirements must be filed by the surety with the court.

If the case is within the jurisdiction of a magistrate or municipal court, that court has jurisdiction to entertain the motion. The hearing should be held at the next bond hearing, or within 24 hours of the filing. If the alleged crime involves a victim, that person must be given notice and an opportunity to be present. If necessary, the hearing should be delayed a reasonable amount of time in order to accommodate a victim. At the hearing, the court must determine whether the surety should be relieved on the bond. If the pleadings and testimony presented constitute a showing of a violation or imminent violation of a condition of the bond, the surety should be relieved on the bond and the defendant remain incarcerated on the original bond, unless the court deems it necessary to reset the bond at a different amount. A new bond form

should be completed and signed by the defendant. The original form SCCA/625, which should indicate the judge's decision on the motion, should be attached to the attached to the new bond form and a copy should be forwarded to the trial court.

If the motion to relieve the surety is denied by the court, a discharge shall be issued and the defendant will remain on the original bond. The original form SCCA/625 should be forwarded to the trial court with a copy of the discharge. The surety is subject to perjury for any material falsities contained in the affidavit.

In the case of general sessions charges, the motion may be filed in a magistrate or municipal court **only** if the original warrant and bond paperwork has not been transferred to the circuit court. Otherwise, the surety **must** file a motion in the circuit court, and that court will make a determination on the motion.

A copy of form SCCA/625 is attached and available on the Judicial Department web site at www.sccourts.org. I would like to thank the Richland County Magistrates and their personnel for assistance in developing the attached form.

RLM/amh
Attachment